

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
ANDREAS PEFANIS on behalf of himself :
and others similarly situated, :
Plaintiff, :
:
-v- :
:
WESTWAY DINER, INC., :
Defendant. :
:
-----X

08 Civ. 002 (DLC)

ORDER

DENISE COTE, District Judge:

By letter dated January 15, 2010, pursuant to the Court's December 29, 2009 Order, plaintiff's counsel submitted a proposed "Notice of Invalidation of Exclusion Request Forms" to be posted in the workplace at Westway Diner, Inc. ("Westway") and a proposed "Second Notice of Class Action Lawsuit Regarding Wages" and "Exclusion Request Form" to be mailed to current employees of Westway (and former employees who were employed by Westway during the original opt-out period) who previously opted-out of this class action. Plaintiff's counsel also submitted the objections of defendant's counsel to the proposed notices.

In the January 15, 2010 letter, plaintiff's counsel requests an extension of the January 29, 2010 discovery deadline until 30 days after the new opt-out deadline. Defendant's counsel consents to this request. Plaintiff's counsel also requests a conference to address defendant's purported failure

to produce certain documents responsive to plaintiff's second request for documents, which plaintiff's counsel indicates was served on November 17, 2009. Plaintiff's counsel does not indicate whether the parties have met and conferred regarding this discovery dispute. It is hereby

ORDERED that the attached "Notice of Invalidation of Exclusion Request Forms," "Second Notice of Class Action Lawsuit Regarding Wages," and "Exclusion Request Form," as modified by the Court, are approved.

IT IS FURTHER ORDERED that defendant shall post the "Notice of Invalidation of Exclusion Request Forms" in a prominent place in the workplace at Westway Diner by **January 22, 2010 at 5:00 PM.**

IT IS FURTHER ORDERED that plaintiff shall mail the "Second Notice of Class Action Lawsuit Regarding Wages" and "Exclusion Request Form" to current employees of Westway (and former employees who were employed by Westway during the original opt-out period) who previously opted-out of this class action.

IT IS FURTHER ORDERED that plaintiff's request for a conference to address defendant's purported failure to produce certain documents is denied without prejudice to renewal by letter application once the parties have met and conferred regarding the dispute.

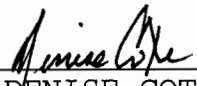
IT IS FURTHER ORDERED that the following schedule shall govern the further conduct of pretrial proceedings in this case:

IT IS FURTHER ORDERED that the following schedule shall govern the further conduct of pretrial proceedings in this case:

1. All fact discovery must be completed by **April 2, 2010**.
2. Any motion for summary judgment must be served by **April 30, 2010**. Opposition served by **May 21, 2010**. Reply served by **May 28, 2010**. At the time any Reply is served, the moving party shall supply two courtesy copies of all motion papers to Chambers by delivering them to the United States Courthouse, 500 Pearl Street, New York, New York.
3. In the event that no motion for summary judgment is filed, the Joint Pretrial Order must be filed by **April 30, 2010**. As described in greater detail in this Court's Individual Practices in Civil Cases, the following documents must be filed with the Pretrial Order: Voir Dire, Requests to Charge, and a Memorandum of Law addressing all questions of law expected to arise at trial. Any responsive papers are due one week thereafter. Counsel will provide the Court with two courtesy copies of all pretrial documents at the time of filing.

SO ORDERED:

Dated: New York, New York
January 19, 2010



DENISE COTE
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANDREAS PEFANIS on behalf of himself and others
similarly situated,

Plaintiff,

-v-

WESTWAY DINER, INC.,

Defendant.
-----X

08 Civ. 002 (DLC)

**NOTICE OF
INVALIDATION OF
EXCLUSION REQUEST
FORMS**

**THIS IS A COURT-AUTHORIZED NOTICE REGARDING A
CLASS ACTION LAWSUIT AGAINST WESTWAY DINER, INC.**

- A former Westway Diner (“Westway”) service employee, Andreas Pefanis (“Plaintiff”) has filed a class action lawsuit against Westway on behalf of all service employees who worked at Westway from January 2, 2002 to the present (the “Class”).
- The Court has found that Westway employees who asked to be excluded from this class action lawsuit may have done so to curry favor with Westway. Therefore, the Court has invalidated all the requests for exclusion from this class action lawsuit that were previously submitted and has required that this Notice be posted at Westway.
- If you submitted a request for exclusion from this class action lawsuit, you will receive another mailing about your rights and options in this lawsuit. The Second Notice will give you another opportunity to request exclusion from this class action. If you wish to request exclusion, you must mail the Exclusion Request Form to Class Counsel.
- The Court has ordered Westway’s management to not accept the Exclusion Request Form from you.
- **It is illegal for Westway to retaliate against you or punish you in any way if you remain in this class action lawsuit. Westway may not reduce your schedule, suspend you, terminate your employment, reduce your rate of pay, or take any other adverse action against you because you remain in this lawsuit. If you believe that Westway is retaliating against you or punishing you because you are remaining in this class action lawsuit, or if you believe that Westway is requiring or encouraging you to exclude yourself from this lawsuit, please call Class Counsel Denise Schulman or D. Maimon Kirschenbaum of Joseph, Herzfeld, Hester & Kirschenbaum LLP at (212) 688-5640.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ANDREAS PEFANIS on behalf of himself and others
similarly situated,

Plaintiff,

-v-

WESTWAY DINER, INC.,

Defendant.
-----X

08 Civ. 002 (DLC)

**SECOND NOTICE
OF CLASS ACTION
LAWSUIT REGARDING
WAGES**

**THIS IS A COURT-AUTHORIZED NOTICE REGARDING A
CLASS ACTION LAWSUIT AGAINST WESTWAY DINER, INC.**

- You are receiving this Second Notice because you previously asked to be excluded from this class action lawsuit brought by a former Westway Diner (“Westway”) service employee, Andreas Pefanis (“Plaintiff”), on behalf of all service employees who worked at Westway from January 2, 2002 to the present (the “Class”).
- The Court has found that Westway employees who asked to be excluded from this class action lawsuit may have done so to curry favor with Westway. Therefore, the Court has invalidated all the requests for exclusion from this class action lawsuit that were previously submitted.
- The Court has ordered Westway’s management to not accept the Exclusion Request Form from you.
- **It is illegal for Westway to retaliate against you or punish you in any way if you remain in this class action lawsuit. Westway may not reduce your schedule, suspend you, terminate your employment, reduce your rate of pay, or take any other adverse action against you because you remain in this lawsuit. If you believe that Westway is retaliating against you or punishing you because you are remaining in this class action lawsuit, or if you believe that Westway is requiring or encouraging you to exclude yourself from this lawsuit, please call Class Counsel Denise Schulman or D. Maimon Kirschenbaum of Joseph, Herzfeld, Hester & Kirschenbaum LLP at (212) 688-5640.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You have the right to remain in this class action lawsuit or exclude yourself. You have the right to remain in this class action lawsuit even if you are still employed by Westway. Westway may not require or encourage you to exclude yourself from this class action lawsuit. Westway may not retaliate or take any adverse action against you if you remain in this class action lawsuit.

1. Remain in the lawsuit

If you do nothing in response to this Second Notice, you will remain a member of the Class.

2. Ask to be excluded from the lawsuit

If you wish to be excluded from this class action lawsuit, you must read, sign, and mail the enclosed Exclusion Request Form by **[45 days from mailing]** to:

**D. Maimon Kirschenbaum
Joseph, Herzfeld, Hester & Kirschenbaum LLP
757 Third Avenue, 25th Floor
New York, NY 10017**

The Exclusion Request Form must be postmarked by **[45 days from mailing]**.

If you wish to request exclusion from this class action lawsuit, you must mail the completed Exclusion Request Form directly to the address above. If you give the completed form to a Westway manager or representative, it will not be valid and you will remain in the Class.

HOW TO GET MORE INFORMATION

If you have any questions about this Second Notice or about this class action lawsuit, please call Class Counsel Denise Schulman or D. Maimon Kirschenbaum of Joseph, Herzfeld, Hester & Kirschenbaum LLP at (212) 688-5640.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREAS PEFANIS on behalf of himself and others
similarly situated, :

Plaintiff, :

-v- :

WESTWAY DINER, INC., :

Defendant. :

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EXCLUSION
REQUEST FORM

----- X
I hereby request to be excluded from this class action lawsuit for unpaid wages known as Pefanis v. Westway Diner, Inc., Case No. 08-Civil-002. I understand that by excluding myself, I will not get any money or other benefits that may come from a trial or settlement of this lawsuit. However, I will not be bound by any of the Court's orders or judgments in this class action lawsuit. I will also keep any rights that I may have to sue Westway Diner, Inc. ("Westway") in a separate lawsuit for unpaid wages and benefits.

I understand that I have the right to remain in this class action lawsuit even if I am still employed by Westway. I understand that Westway may not retaliate or take any adverse action against me if I remain in this class action lawsuit. I affirm that Westway did not require or encourage me to exclude myself from this class action lawsuit.

Full Legal Name (Print)

Signature

Date

If you wish to be excluded from this class action lawsuit, you must read, sign, and return this form by **[45 days from mailing]** directly to:

D. Maimon Kirschenbaum
Joseph, Herzfeld, Hester & Kirschenbaum LLP
757 Third Avenue, 25th Floor
New York, NY 10017

DO NOT MAIL THIS FORM IF YOU WANT TO REMAIN IN THE CLASS.

THIS FORM IS NOT VALID UNLESS YOU MAIL IT DIRECTLY TO THE ADDRESS ABOVE. IF YOU GIVE THIS FORM TO A WESTWAY MANAGER OR REPRESENTATIVE, IT WILL NOT BE VALID AND YOU WILL REMAIN IN THE CLASS.